



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/576,686	05/23/2000	Paul B. Darcy	MFCP.70154	3725
45809	7590	12/21/2005	EXAMINER	
SHOOK, HARDY & BACON L.L.P. (c/o MICROSOFT CORPORATION) 2555 GRAND BOULEVARD KANSAS CITY, MO 64108-2613			JABR, FADEY S	
			ART UNIT	PAPER NUMBER
			3639	

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/576,686

Applicant(s)

DARCY ET AL.

Examiner

Fadcy S. Jabr

Art Unit

3639

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-20,30,32-35,43 and 44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-20,30,32-35,43 and 44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

Claims 1, 3-20, 30, 32-35, 43 and 44 remain pending and are again presented for examination.

Response to Arguments

1. Applicant's arguments filed 22 September 2005, with respect to the rejection under 35 U.S.C. section 112 have been fully considered and are persuasive. The previous 35 U.S.C. 112 rejection has been withdrawn.
2. Applicant's arguments filed 22 September 2005, with respect to rejections under 35 U.S.C. section 102 as being anticipated by "Strothmann..." have been fully considered and are not persuasive.
3. Applicant's arguments filed 22 September 2005, with respect to rejections under 35 U.S.C. section 103 as being unpatentable over Strothmann in view of Modeling have been fully considered and are not persuasive.
4. Applicant argues (with respect to claims 1, 30 and 44) that Strothmann does not teach identifying one or more services or resources utilized to execute the computer transaction, assigning a portion of the monetary service providing cost of each resource to the computer transactions, and summing the monetary service providing cost of each resource to determine the monetary cost for the computer transaction. Examiner notes that Strothmann does disclose identifying numerous categories of resources utilized to execute the computer transaction (Col. 2,

Art Unit: 3639

lines 56-64; see Figure 1, and Tables A-P), determines the resources' percentage of the total of the transaction cost (Col. 2, lines 56-64; Col. 3, lines 23-31), and totals all of the resource percentage costs to a 100 percent (Col. 2, lines 56-64; Col. 3, lines 23-31; also see Figure 1, and Tables A-P).

5. Applicant's argument (with respect to Claim 43) regarding the use of Official Notice is fully considered but not persuasive. The Official Notice is upheld, support for identifying fixed and variable cost resources can be found in Modeling, where Modeling teaches costs for resources (equipment) by utilizing fixed and variable costs (Page 584, lines 1-14).

6. Applicant's arguments (with respect to claims 7-18 and 32-33) that Strothmann and Modeling fail to disclose a cost of a level of quality associated with a computer transaction executed by a user. Examiner notes that Modeling does disclose a cost for a level of quality (network reliability, database availability, and time delay are all forms of quality). Modeling teaches a cost associated with the communication and traffic of a transaction (Page 584, lines 9-11).

7. Applicant's arguments filed 22 September 2005 have been fully considered but they are not persuasive. As discussed above, Strothmann discloses identifying resources utilized to execute computer transactions, while Modeling teaches costs associated with the level of quality of one or more resources used in executing a transaction, and are therefore provide suggestion to combine.

Claim Objections

8. Claims **19, 20, 34 and 35** are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Computer-readable medium or a computer system does not actively perform the method steps and are therefore in improper dependent form.

Claim Rejections - 35 USC § 102

9. Claims **1, 3-6, 19-20, 30, 34-35 and 44** are rejected under 35 U.S.C. 102(b) as being anticipated by Strothmann, U.S. Patent No. 5,745,880.

As per **Claim 1**, Strothmann discloses a method comprising:

- identifying one or more underlying services utilized to execute the computer transaction (Col. 2, lines 56-64; see Figure 1, and Tables A-P);
- determining a monetary service providing cost associated with the one or more services utilized to execute the transaction, wherein determining the monetary service providing cost comprises,
 - identifying each resource utilized to provide the one or more services (Col. 2, lines 56-64; Col. 3, lines 23-31), and
 - assigning a portion of the monetary service providing cost of each resource to the computer transaction, and (Col. 2, lines 56-64; Col. 3, lines 23-31),;

- summing the monetary service providing cost for each resource to determine the monetary cost for the computer transaction in order to pass the monetary cost for the computer transaction to a user executing the computer transaction
(Col. 2, lines 56-64; Col. 3, lines 23-31; also see Figure 1, and Tables A-P).

As per **Claim 3**, Strothmann further discloses the method, wherein equipment is a utilized resource (see Supra Fig. 1 and Tables A-P for the hardware) and the determining step includes calculating the equipment cost as a percentage of an overall equipment cost for equipment utilized to execute the transaction (e.g. see Table A for the percentage of an overall equipment cost).

As per **Claim 4**, Strothmann further discloses the method, wherein the software is a utilized resource (see Id.) and the monetary service providing cost includes a software cost and the determining step includes calculating the software cost as a percentage of an overall equipment cost (see Id.).

As per **Claim 5**, Strothmann further discloses the method, wherein the personnel is a utilized resource (e.g. see Tables C and E) and the monetary service providing cost includes a personnel cost and the determining step includes calculating the personnel cost as a percentage of an overall equipment cost (see Id.).

As per **Claim 6**, Strothmann further discloses the method, wherein the facility is a utilized resource (see Table G and col. 7, lines 12-19) and the monetary service providing cost includes a facility cost and the determining step includes calculating the facility cost as a percentage of an overall equipment cost (see *Id.*).

As per **Claim 19**, Strothmann further discloses the medium (see *Supra* Claim 1).

As per **Claim 20**, Strothmann further discloses the system (see *Supra* Claim 1).

As per **Claim 30**, Strothmann discloses a method comprising:

- requesting execution of a transaction (Inherently, the user must request execution of service initially);
- receiving the user process request (the service provider receives the request);
- executing the user process request (see Figs. 1-2), and
- determining a monetary cost associated with the execution of the transaction as a function of the services utilized to execute the transaction, wherein determining the monetary service provider cost includes identifying each resource (col. 2, lines 56-64) utilized to provide the service and assigning a portion of the monetary service provider cost of each resource to the computer transaction in order to pass the monetary service provider cost to the user executing the computer transaction (see *Supra* Fig. 1 and Tables A-P).

As per **Claim 34**, Strothmann further discloses the medium (see *Supra* Claim 30).

As per **Claim 35**, Strothmann further discloses the system (see Supra Claim 30).

As per **Claim 44**, Strothmann discloses a system comprising:

- a service identification component (moving a single application function, migrating all of the functions on the existing computer platform, or migrating a selected number of functions) (see Fig. 1 and Tables A-P);
- a resource identification component (hardware, software, personnel and facility) (see col. 2, lines 56-64);
- a cost assessment component for determining a monetary cost to a provider for each resource and determining the monetary cost for the transaction based on a total monetary service provider cost for each utilized resource (see Supra Fig. 1 and Tables A-P).

Claim Rejections - 35 USC § 103

10. Claim **43** is rejected under 35 U.S.C. 103(a) as being unpatentable over Strothmann, U.S. Patent No. 5,745,880.

As per **Claim 44**, Strothmann discloses the invention considering a plurality of cost resources (e.g. hardware, software, facility, personnel), and other costs as recited earlier, but does not expressly disclose that which of these known business costs is directed to the fixed cost resource or variable source.

The consideration of fixed or variable cost resources is a key factor in the success of any cost modeling business. Businesses have resorted to many different techniques of obtaining the

Art Unit: 3639

necessary cost resources including: equipment, software, personnel, and facility cost resource, and some of these resources would be further classified as the fixed cost (such as lease payment for the facility, or contracted personnel expense for a certain term) or variable cost. This practice is well known in the business community and would follow in the computer transaction business as well where a plurality of costs would be passed to a user for utilizing the service.

Accordingly, it would have been obvious at the time the invention was made to a person of ordinary skill in the art to modify the method of Strothmann such that the invention include identifying the fixed cost resource and the variable cost resources and summing a monetary service providing cost for the fixed cost resource and a monetary service providing cost for the variable cost resource for the purpose of providing the user with the total costs of utilizing the required service by factoring into the fixed and variable cost resources the decision making.

11. Claims 7-18 and 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strothmann, U.S. Patent No. 5,745,880 in view of Modeling Resources Allocation and Performance Measures in Distributed Computer Networks (hereinafter Modeling).

As per **Claims 7, 18 and 32**, Strothmann discloses the invention as recited earlier, but does not expressly disclose the method including determining a cost for a level of quality of the one or more services.

Modeling teaches for a cost modeling of the computer transactions, that the invention includes determining a cost for a level of quality of the service (see pages 583-585; Figs. 1-4 and Tables 1-3 for optimal configurations (more optimized, better performance)).

Since Modeling and Strothmann are both from the same field of endeavor, the purpose disclosed by Modeling would have been well recognized in the pertinent field of Strothmann.

Accordingly, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to determine the cost for the level of quality of the service, as taught by Modeling, for the purpose of providing a more complete model that integrates most aspects (including the cost for the level of quality of services) of the computer transaction to handle cost structures.

As per **Claims 8-12 and 33**, the modified method of Strothmann discloses the invention as recited earlier, but does not expressly disclose the method including:

- determining a cost for the availability of the services (equipment, facility, personnel, etc.).

Modeling teaches for a cost modeling of the computer transactions, that the invention includes determining a cost for the availability of the services (see page 583 for Database availability; for example). The consideration of a cost for the availability of the service is a key factor in the success of any cost modeling business. A cost for the availability of the service is crucial to determine whether it is feasible to request the service when the cost for the availability of the service is too high. This practice is well known in the business community and would follow in the computer transaction business as well where a plurality of costs would be passed to a user for utilizing the service.

Since Modeling and Strothmann are both from the same field of endeavor, the purpose disclosed by Modeling would have been well recognized in the pertinent field of Strothmann.

Accordingly, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to further modify the method of Strothmann such that the determining the cost for the quality of the service includes determining a cost for the availability of the various services and calculate the various costs (equipment, personnel, etc.) as a percentage of an overall cost to provide the availability of the services, as taught by Modeling, for the purpose of providing the cost modeling that handle more complex situations.

As per **Claims 13-17**, the modified method of Strothmann discloses the invention as recited above, but does not specifically disclose the method including the step of determining a cost for the quality of services including determining a cost of the response time of the services.

Modeling further teaches the method, wherein the step of determining a cost for the quality of services includes determining a cost of the response time of the services (see Time Delay, page 583; see chapter 4.1, pages 583-584).

Since Modeling and Strothmann are both from the same field of endeavor, the purpose disclosed by Modeling would have been well recognized in the pertinent field of Strothmann.

Accordingly, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to further modify the method of Strothmann such that the determining the cost for the quality of service includes determining a cost of the response time of the services and calculate the various resource costs (equipment, personnel, etc.) as a percentage of an overall cost to provide the response time of the services, as taught by Modeling, for the purpose of providing a more complete model that integrates most aspects (including the cost response time of the services) of the computer transaction to handle cost structures.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fadey S. Jabr whose telephone number is (571) 272-1516. The examiner can normally be reached on Mon. - Fri. 7:30am to 4:00pm.

Art Unit: 3639

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Fadey S Jabr
Examiner
Art Unit 3639

FSJ

Please address mail to be delivered by the United States Postal Service (USPS) as follows:

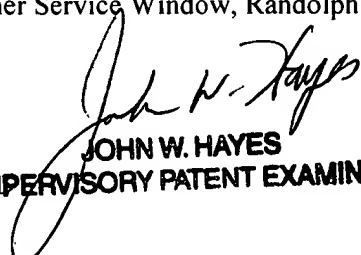
Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(571) 273-1516 [Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to the Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314


JOHN W. HAYES
SUPERVISORY PATENT EXAMINER